

Thank you for the opportunity yada yada...

As you know, the U.S. Army Corps of Engineers, Sacramento District agreed, along with the U.S. Environmental Protection Agency Region IX, to be a cooperating agency in the preparation of the proposed EIS/EIR, in our letter dated November 24, 2008. Although our response to the request to cooperate was based initially on our role as a regulatory agency under the Clean Water Act and Rivers and Harbors Act, we note that the Corps' Civil Works mission also has a substantial interest in the proposed activities, particularly as they may affect planned projects/programs.

With respect to our regulatory mission, we provide the following comments for your consideration. The Corps' jurisdiction in the BDCP project area falls under two authorities: Section 10 of the Rivers and Harbors Act for work in navigable waters and Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the U.S. We envision using the BDCP EIS/EIR as a programmatic document, tiering additional NEPA documents for Corps permit actions from it.

Section 10 primarily addresses navigation and navigability concerns that may be posed by the proposed activities. We specifically note that any work anticipated below the Stockton Deep Water Ship Channel is subject to authorization under Section 10. Moreover, other work in tidal waters, which are, by definition, considered navigable, would similarly be subject to authorization under Section 10.

Because it is anticipated that some or all of the proposed projects would result in discharges into waters of the U.S., authorization under Section 404 of the Clean Water Act would also be required. In developing alternatives, we urge you to consider an appropriate range that we may use in subsequent NEPA document(s) that must also evaluate compliance with the Clean Water Act Section 404(b)(1) Guidelines. Please note that the Corps can only authorize the least environmentally damaging alternative (LEDPA). The LEDPA must demonstrate avoidance and minimization of impacts, and in the case of special aquatic sites, such as wetlands, vegetated shallows and mudflats, the project proponent must overcome the presumption that other alternatives that do not involve discharges to special aquatic sites exist. Finally, the regulations require that all unavoidable impacts be compensated. We recommend that you review the Mitigation Rule at 33 CFR 332 for specific information regarding compensatory mitigation.

Under both Section 10 and Section 404, the Corps must perform a Public Interest Review. We expect that the NEPA regulations compel you to provide adequate information for us to undertake our review in subsequent document(s), but encourage you to continue to keep us informed of the development of alternatives and impact analyses to ensure that this is the case.